Filed 2/3/05 In re Jacob F. CA3

NOT TO BE PUBLISHED

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Sacramento)

In re JACOB F. et al., Persons Coming Under the Juvenile Court Law.	
DEPARTMENT OF HEALTH & HUMAN SERVICES, Plaintiff and Respondent, v. HEIDI Z., Defendant and Appellant.	C047264 (Super. Ct. Nos. JD218273 & JD218274)

Appellant, mother of the minors, appeals from a reinstatement of the orders terminating her parental rights, entered at the hearing on remand from the prior appeal in *In re Jacob F. et al.* (Mar. 23, 2004, C045232) [nonpub. opn.]. (Welf. & Inst. Code, § 395 [further undesignated statutory references are to this code].) Appellant contends the Department of Health and Human Services (DHHS) still has not complied with the notice requirements of the Indian Child Welfare Act (ICWA) (25 U.S.C.

§ 1901, et seq.) because the inquiry into the ancestor's information was inadequate. We affirm.

FACTS

The underlying facts of the dependency and previous ICWA notice are fully set forth in the prior opinion and need not be repeated here. It is enough to note that appellant claimed both Cherokee and Creek heritage. The Muscogee Creek Nation intervened after receiving notice of the proceedings. DHHS sent no notice to the Cherokee tribes.

In *In re Jacob F., supra,* C045232, we concluded reversal was required so that DHHS could send notice to the Cherokee tribes and the court could, if necessary, conduct a hearing to determine which tribe had the more significant contact with the minors.

In February 2004, prior to the filing of our opinion in *In re Jacob F., supra,* C045232, DHHS sent notice of the proceedings to the three federally recognized Cherokee tribes. According to the declaration of the person who prepared and sent the notices, all the information provided by the family when questioned about their ancestors was included in the notice. Copies of the notice forms (SOC 318 and SOC 319) sent to the tribes, the proofs of service and the original petitions were attached to the declaration filed with the court. Subsequently, notices of the post permanency review hearing date were sent to each of the tribes using only the SOC 319 form.

Thereafter, DHHS received letters from the United Keetoowah Band of Cherokee Indians and the Eastern Band of Cherokee Indians and filed copies of them with the court. The letters stated that

neither minor was eligible for registration with that tribe. DHHS also filed copies of the returned receipts showing delivery of the notice forms to each of the Cherokee tribal entities.

On June 29, 2004, the juvenile court held a hearing on the remittitur from the prior appeal. The court stated that notice had been given to all three tribes. The court further observed that two of the Cherokee tribes had responded that the minors were not eligible for enrollment and that the Cherokee Nation had not responded to the notice. The court found proper notice was given to all three Cherokee tribes and there was no evidence that the minors were members of any of them. The court reaffirmed that the minors were members of the Muscogee Creek Nation, which had intervened. The court reinstated the orders terminating parental rights.

DISCUSSION

Appellant contends remand for re-notice is required because the notices to the Cherokees lacked sufficient genealogical information. Appellant further asserts that DHHS did not adequately inquire as to the minors' ancestors, speculating that additional information may have been available. Finally, appellant argues DHHS did not file all the notice documentation with the court. We disagree with all of these contentions.

As we stated in the prior appeal, the ICWA protects the interests of Indian children and promotes the stability and security of Indian tribes by establishing minimum standards for, and permitting tribal participation in, dependency actions. (25 U.S.C. §§ 1901, 1902, 1903(1), 1911(c), 1912.) The juvenile

court and DHHS have an affirmative duty to inquire at the outset of the proceedings whether a child who is subject to the proceedings is, or may be, an Indian child. (Cal. Rules of Court, rule 1439(d).) Federal regulations and the federal guidelines on Indian child custody proceedings both specify the contents of the notice to be sent to the tribe in order to inform the tribe of the proceedings and to assist the tribe in determining if the child is a member or eligible for membership. (25 C.F.R. § 23.11(a), (d), (e); 44 Fed.Reg. 67588 (11-26-79).) If known, extensive genealogical information must be provided to assist the tribe in making its determination of whether the child is eligible for membership and whether to intervene. (25 C.F.R. § 23.11(a), (d), (e); 44 Fed.Reg. 67588 (11-26-79); *In re D.T.* (2003) 113 Cal.App.4th 1449, 1454-1455.)

Here, the DHHS did inquire about the minors' possible Indian heritage and included all known information on several generations to the tribes on the SOC 318 and SOC 319 forms. The declaration to this effect was filed with the court and unchallenged by any party despite ample opportunity to do so. There was no failure to inquire and the resulting notices based upon the information received from the family were as complete as possible.

Moreover, while filing copies of all documents related to notice was required at the time, DHHS did file the notices, proofs of service, copies of the return receipts and copies of the tribal responses as they were received. (*In re Marinna J.*

(2001) 90 Cal.App.4th 731, 739, fn. 4; *In re Levi U.* (2000) 78 Cal.App.4th 191, 198, but see Cal. Rules of Court, rule 1439(f).)

The juvenile court properly found, based upon the evidence in the record before it, that notice had been properly sent to the Cherokee tribes and the minors were not members of any of the three Cherokee tribes. Under these circumstances, reinstatement of the termination order was required by the prior remand.

DISPOSITION

The orders of the juvenile court are affirmed.

BLEASE, Acting P. J.

We concur:

NICHOLSON, J.

CANTIL-SAKAUYE, J.